

6450-01-P

DEPARTMENT OF ENERGY

10 CFR Part 300

RIN 1901-AB23

**Corrections and Updates to Technical Guidelines for Voluntary Greenhouse Gas
Reporting**

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Interim final rule and request for comment.

SUMMARY: The Department of Energy (DOE) today publishes an interim final rule that corrects, updates, and makes clarifying changes to Technical Guidelines used for reporting under the Voluntary Reporting of Greenhouse Gases Program authorized by section 1605(b) of the Energy Policy Act of 1992. The Technical Guidelines were incorporated by reference in final program guidelines that were published on April 21, 2006, and placed in the Code of Federal Regulations (CFR). In accordance with the rules governing incorporation by reference in the CFR, DOE is amending its program regulations to reflect the update of the Technical Guidelines.

DATES: Effective Date: This interim final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless comments received warrant or necessitate a later effective date. The incorporation by reference of the updated Technical Guidelines is approved by the Director of the Federal Register as of **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** .

Comment Date: Written comments must be received by **[INSERT DATE 20 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]** Comments may be mailed to the address given in the **ADDRESSES** section below. Comments also may be submitted electronically by e-mailing them to:

1605bguidelines.comments@hq.doe.gov. We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail.

ADDRESSES: You may submit written comments, identified by RIN 1901-AB23, by any of the following methods:

1. E-mail to 1605bguidelines.comments@hq.doe.gov. Include RIN 1901-AB23 and “Interim Final Rule Comments” in the subject line of the e-mail. Please include the full body of your comments in the text of the message or an attachment.
2. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
3. Mail: Address the comments to Mark Friedrichs, PI-40, Office of Policy and International Affairs, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. DOE requires, in hard copy, a signed original and three copies of all comments. Due to potential delays in the DOE’s receipt and processing of mail sent through the U.S. Postal Service, we encourage commenters to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Mark Friedrichs, PI-40, Office of Policy and International Affairs, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington DC 20585, or e-mail:

1605bguidelines.comments@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background and Discussion of Interim Final Rule
- II. Regulatory Review
- III. Approval of the Office of Secretary

I. Background and Discussion of Interim Final Rule

Section 1605(b) of the Energy Policy Act of 1992 directed DOE to issue guidelines establishing a voluntary greenhouse gas reporting program (42 U.S.C. 13385(b)). On February 14, 2002, the President directed DOE, together with other involved Federal agencies, to recommend reforms to enhance the Voluntary Reporting of Greenhouse Gases Program established by DOE in 1994. On April 21, 2006, following a lengthy public review process, DOE published revised final General Guidelines for Voluntary Greenhouse Gas Reporting (71 FR 20784). Those guidelines incorporated by reference detailed Technical Guidelines, dated March 2006, that are needed to fully implement the revised Voluntary Reporting of Greenhouse Gases Program.

Subsequent to the April 21, 2006 publication of the revised final General Guidelines and during preparation of new forms and instructions for reporting, DOE identified a number of errors and inconsistencies in the Technical Guidelines that warrant correction or clarification. To ensure that any revision of the March 2006 Technical Guidelines addressed as many of these problems as possible, on August 3, 2006, DOE sent a message by electronic mail to all persons who had previously expressed an interest in the guidelines and requested that they identify any needed technical corrections, clarifications, interpretations or other changes to the guidelines. Subsequently, DOE received communications that recommended additional corrections and other changes for consideration.

Following a careful review of the recommended corrections and other suggested changes, DOE made those modifications to the Technical Guidelines that it believed were necessary to correct all the identified errors and inconsistencies or other ambiguities, while adhering to the essential language and intent of the March 2006 version of the Technical Guidelines. The updated version of the Technical Guidelines is dated January 2007.

The regulations of the Administrative Committee of the Federal Register provide that an agency that seeks to change a document approved for incorporation by reference in a regulation must: (1) publish notice of the change in the Federal Register and amend the Code of Federal Regulations; (2) ensure that a copy of the amendment or revision is on file at the Office of the Federal Register; and (3) notify the Director of the Federal Register in writing that the changes are being made. 1 CFR 51.11(a). Accordingly, DOE sent the January 2007 update of the Technical Guidelines to the Director of the Federal Register and obtained his approval of the incorporation by reference of the January 2007 Technical Guidelines in the regulations for the section 1605(b) program that are published in the Federal Register and the Code of Federal Regulations. By today's interim final rule, DOE changes the date of the Technical Guidelines from March 2006 to January 2007 in 10 CFR 300.13.

DOE believes that all of the modifications in the January 2007 version of the Technical Guidelines are fully consistent with the section 1605(b) program's General Guidelines and DOE's original intent regarding the methods and other guidance provided in the Technical Guidelines. Before these changes are made final, however, DOE is providing an opportunity for public review and comment on the specific changes that

DOE has made. DOE is specifically soliciting public comment on whether any of the changes DOE has made are inconsistent with the General Guidelines. The revised January 2007 Technical Guidelines are available on the web at: <http://www.pi.energy.gov/enhancingGHGregistry/>. DOE is making two versions of the updated Technical Guidelines available on the website. One version shows all of the changes made since the March 2006 Technical Guidelines were issued, with the new text underscored and the deleted text marked as deleted. The second version includes all the changes, but does not highlight them.

The changes and clarifications included in the updated Technical Guidelines fall into the following categories:

Corrections of factual and drafting errors. The updated Technical Guidelines correct a number of clerical or typographical errors that appeared in the March 2006 Technical Guidelines. The errors include inaccurate physical values, repeated text, misplaced definitions, and incorrect citations or website links.

Elimination of inconsistencies. There were instances where language in the March 2006 Technical Guidelines was not entirely consistent with the General Guidelines or with language in other parts of the Technical Guidelines. DOE has revised the Technical Guidelines to eliminate this inconsistency. In cases where the Technical Guidelines were internally inconsistent, DOE endeavored to remove this inconsistency by retaining the language it determined was most consistent with DOE's original intent, as explained in the preambles to the interim final General Guidelines published on March 24, 2005 (70 FR 15171-81) and the final General Guidelines published on April 21, 2006 (71 FR 20785-803).

Updated references. In some cases, the March 2006 Technical Guidelines do not refer to the most current versions of documents referenced in the guidelines, even though some of those documents were in the public domain before the issuance of the final guidelines. The updated Technical Guidelines include a number of updates to referenced documents. During the development of the updated Technical Guidelines, consideration was given to referencing the 2006 emission inventory guidelines of the Intergovernmental Panel on Climate Change (IPCC). While these guidelines are generally viewed as the best available inventory guidelines, they have yet to be officially adopted by the UN Framework Convention on Climate Change. Since DOE's Energy Information Administration has authority under the Technical Guidelines to update the factors and methodologies based on the IPCC guidelines as soon as it is appropriate to do so, no change to the Technical Guidelines is necessary at this time.

Clarifications of intent. In some instances the language used in the March 2006 Technical Guidelines was confusing or vague. In the updated version, DOE added clarifying words or text where a modification was likely to significantly enhance reader comprehension.

Modification or elimination of inappropriate calculation methods. In a few cases, commenters or DOE identified certain calculation methods as inappropriate for the purposes stated in the Technical Guidelines. For example, DOE eliminated the action-specific method for calculating the reductions associated with the recovery of methane from anaerobic digesters of animal waste because DOE concluded that this method is not needed to calculate reductions associated with these sources of emissions and is inconsistent with other guidance in both the General Guidelines and other parts of the

Technical Guidelines. In other cases, formulas or factors were modified to ensure the applicability of the methods to the sources identified.

DOE did not adopt in the January 2007 Technical Guidelines some clarifications or other changes recommended by stakeholders. In some cases, the stakeholders sought modifications that would be inconsistent with the General Guidelines or outside the scope of the guidelines under section 1605(b). DOE may consider additional changes to the Technical Guidelines when it conducts the periodic reviews provided for in 10 CFR 300.1(f).

II. Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action has been determined to not be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993), as amended by Executive Order 13258, 67 FR 9385 (February 26, 2002). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires that an agency prepare an initial regulatory flexibility analysis for any regulation when a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule makes corrections, updates and clarifying changes to Technical Guidelines for the Voluntary Reporting of Greenhouse Gases

Program incorporated by reference in General Guidelines published on April 21, 2006.

These changes do not affect the burden on the entities that report emissions under the section 1605(b) program. Moreover, as stated in the April 2006 notice of final guidelines, the reporting program is voluntary and DOE anticipates that small entities will weigh the benefits and costs when deciding to participate. On the basis of the foregoing, DOE certifies that these amendments to the Technical Guidelines will not have a significant economic impact on a substantial number of small entities.

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will provide this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

The Energy Information Administration (EIA) on November 9, 2006 (71 FR 65786) submitted the new forms and associated instructions for reporting under the April 2006 revised guidelines to OMB for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The changes to the Technical Guidelines made by today's interim final rule do not include any additional information collection requirements.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into the class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth in DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Specifically, the interim final rule is covered under the categorical exclusion in paragraph A5 of Appendix A to subpart D, 10

CFR part 1021, which applies to rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the rule published today does not contain any Federal mandates affecting states, tribal, or local governments, so these requirements do not apply.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4779 (February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct

rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this interim final rule and has determined that it would not preempt State law and would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibility among the various levels of government. No further action is required by the Executive Order.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires Federal agencies to issue a “Family Policymaking Assessment” for any rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use,” 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the rule published today is not a significant regulatory action and will not have a significant adverse effect on the supply, distribution, or use of energy and, thus, the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today’s interim final rule under the OMB and DOE guidelines, and concluded that it is consistent with applicable policies in those guidelines.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this rulemaking. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

III. Approval of the Office of the Secretary

The Secretary of Energy has approved the publication of this interim final rule.

List of Subjects in 10 CFR part 300

Administrative practice and procedure, Energy, Gases, Incorporation by reference, Reporting and recordkeeping requirements.

Issued in Washington, D.C. on January 25, 2007

Karen A. Harbert,

Assistant Secretary for Policy and International Affairs

For the reasons set forth in the preamble, the Department of Energy amends part 300 of title 10, chapter II, subchapter B of the Code of Federal Regulations as set forth below.

PART 300 –VOLUNTARY GREENHOUSE GAS REPORTING PROGRAM: GENERAL GUIDELINES

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 7101 et seq., and 42 U.S.C. 13385(b).

2. The first sentence of § 300.13 is revised to read as follows:

§ 300.13 Incorporation by reference.

The Technical Guidelines for the Voluntary Reporting of Greenhouse Gases (1605(b)) Program (January 2007), referred to throughout this part as the “Technical Guidelines,” have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. * * *